had the property conveyed to them. These legal costs are not recoverable where the plaintiff recovers for the loss of his bargain (see *Re Daniel* [8]). The plaintiffs are also not entitled to recover by way of special damages the sum of $10,000 which they had to pay to the sub-purchaser as liquidated damages. In this connection I agree with respect with what was said by Thorne J. in the case of *Khor Seng Lee* v. *Sithuramasamy Chetty*.[7]

In the result the plaintiffs are entitled to recover the sum of $60,000 which they paid as deposit on the date of the agreement together with a reasonable rate of interest, which I fix at 6% per annum, and they are entitled to recover by way of damages for loss of bargain a sum of $56,725. Accordingly there will be judgment for the plaintiffs for $116,725 with interest on $60,000 at 6% per annum from 1st July, 1964 to date and on the aggregate sum of 6% per annum from today to date of realisation. The defendant must also pay the costs of the action as taxed.

Judgment for the plaintiffs.

Solicitors: *Chooi & Co.; P. C. Au-Yong & Co.*

WONG FATT SING v. PUBLIC PROSECUTOR

[A.Cr.J. (Azmi C.J. (Malaya)) June 21, 1967]

[K.L. — Criminal Appeal No. 29 of 1967]

Arms — Offensive weapon — Person found in company of possessor of — Denial of knowledge — Size of weapon, place and time of incident — Corrosive and Explosive Substances and Offensive Weapons Ordinance, 1958, ss. 6(1) & 7(1).

The appellant was convicted on a charge under section 7(1) of the Corrosive and Explosive Substances and Offensive Weapons Ordinance. On the night in question he was seen in the company of three other male youths on the pavement in Jalan Stadium. One of them was seen throwing an object and subsequently a knife was found at the place where the object was thrown. That person was charged and convicted of having in his possession the knife in question, which was a small dagger about 6" long and 1" or so wide, a thing which could easily be hidden in one's pocket. The appellant gave evidence on oath to the effect that he had not seen the knife before and that he did not know whether the 1st accused possessed it or not. The learned magistrate dismissed this evidence by merely stating that "a mere denial of knowledge that the accused No. 1 was in possession of the dagger was not sufficient. Therefore the circumstances clearly showed that he knew the 1st accused was in possession of the dagger without lawful purpose."

Held: this was a serious misdirection in view of the fact that the knife was small enough to be hidden in one's pocket and the incident took place at night. These circumstances were not sufficient to raise a reasonable presumption that the appellant knew of the existence of the knife in the possession of the 1st accused.

MAGISTRATE'S CRIMINAL APPEAL.

R. P. S. Rajasooria Jr. for the appellant.

Hashim Abdul Majid (Deputy Public Prosecutor) for the respondent.

Azmi C.J. (Malaya): The appellant was charged as follows:—

"That you on 16.6.65 at about 9.30 p.m. at Jalan Stadium, Kuala Lumpur, in the District of Kuala Lumpur, in the State of Selangor, in a public road were found in the company of Chong Yon Lai who had in his possession an offensive weapon to wit a dagger, in contravention of section 6 of the Ordinance, No. 43 of 1958, under the circumstances which raised a reasonable presumption that you knew the said Chong Yon Lai, was in possession of such offensive weapon that you have thereby committed an offence under section 7(1) of the Corrosive and Explosive Substances and Offensive Weapons Ordinance, No. 43 of 1958 and punishable under section 6(1) of the same Ordinance."

The facts of the case briefly are as follows. One night at about 9.30 p.m. appellant was seen in the company of three other male youths on the pavement in Jalan Stadium. One of them (1st accused) was seen throwing an object and subsequently a knife was found at the place where the object was thrown. The 1st accused was charged and convicted of having in his possession the knife in question.

The appellant was tried together with the other men in the same trial. The knife in question is a small dagger about 6" long and an inch or so wide, a thing which could easily be hidden in one's pocket.

The learned magistrate in reference to the case against the appellant said as follows:—

"The third accused (the appellant) in his defence on oath admitted that he was in the company of the other accused. He denied knowledge that accused No. 1 was in possession of the knife. According to him he met accused No. 1 and 2 on his way to the stadium. Under section 7(1) of the Ordinance the onus of proving that the accused 'had reasonable grounds for believing that such other person was . . . . in possession . . . . such weapon for a lawful purpose' lies on the accused. This burden was not discharged by him. There was no evidence at all that he had reasonable grounds for believing the first accused was in possession of the dagger for a lawful purpose. A mere denial of knowledge that accused No. 1 was in possession of the dagger was not sufficient. Therefore the circumstances clearly showed that he knew the first accused was in possession of the dagger, without a lawful purpose."

Section 7(1) of the Ordinance provides that any person who is found in the company of another who is carrying or is in possession any offensive weapon in circumstances which raises a reasonable presumption that he knew that such person was carrying or had in his possession such weapon, unless he shall prove that he had reasonable ground for believing that such other person was carrying or had in his possession or under his control any weapon for a lawful purpose, shall be guilty of an offence.

In this case therefore, in order to make out a case against the appellant, the prosecution must

satisfy the court beyond reasonable doubt at the close of its case:—

(i) that the appellant was in the company of the first accused,

(ii) that the first accused was carrying or had in his possession the knife in question,

(iii) that there were circumstances which raised a reasonable presumption that the appellant knew that the first accused was carrying or had in this possession the said knife.

The section, however, placed the burden on the appellant that the first accused was carrying the knife for a lawful purpose.

It is quite clear that the first two facts had been proved.

With reference to the third fact, the appellant gave evidence on oath to the effect that he had not seen the knife before and that he did not know whether the first accused possessed it or not. On this question the learned magistrate dismissed the evidence of the appellant by merely stating as follows:—

"A mere denial of knowledge that the accused No. 1 was in possession of the dagger was not sufficient. Therefore the circumstances clearly showed that he knew the first accused was in possession of the dagger without lawful purpose."

In my view this is a serious misdirection, particularly in view of the fact that the knife was small enough to be hidden in one's pocket and the incident took place at night and the learned magistrate should have come to the conclusion that these circumstances were not sufficient to raise a reasonable presumption that the appellant knew of the existence of the knife in the possession of the first accused.

I would therefore allow the appeal and quash the conviction and sentence.

Appeal allowed.

Solicitors: *Dato' R. P. S. Rajasooria & Son.*

KAM HOY TRADING v. HUP AIK TIN MINING CO.

[O.C.J. (Gill J.) June 21, 1967]

[K.L. — Civil Suit No. 14 of 1966]

Partnership — Dissolution of — Withdrawal from partnership not registered with Registrar of Businesses — Notice not given to plaintiffs.

Practice and Procedure — Service on partners — Partners' withdrawal from firm not duly registered nor notice given.

The applicants sought for an order that service of the writ of summons and notice in this case on them as partners of the defendant firm be set aside. Their affidavits in support alleged that they ceased to be partners of the defendant firm having sold and assigned, all their shares, rights and interests in the firm and duly signed the withdrawal form from the partnership. However they subsequently learned that the withdrawal forms were not registered with the Registrar of Businesses.

Held: when partners dissolve their partnership, they should send notice to all persons who have trusted them as partners. In the present case the applicants either should have given notice to the plaintiffs of their withdrawal or taken steps to see that their withdrawal was duly registered with the Registrar of Businesses. In the absence of such notice or registration they were not entitled to succeed on their application.

[**Editorial Note:** Reference may usefully be made to the cases of *Tan Boon Chio* v. *Ho Hong Bank Ltd.* [1934] M.L.J. 180; [1934] S.S.L.R. 199 and *Re Chop Yew Seong* [1958] M.L.J. 239.]

Case referred to:—

(1) *Graham & Ors.* v. *Hope & Ors.* (1792), Peake 208; 170 E.R. 131.

CIVIL SUIT.

C. H. Au-Yong for the defendants/applicants.

L. S. Tan for the plaintiffs/respondents.

Gill J.: This was an application by Foong Soon Hin, Wong Nung Chong and Loo Ng Ming for an order that service of the writ of summons and notice herein on them as partners of the defendant firm be set aside.

The claim against the defendants was for diesoline and other lubricants supplied to them from time to time from July 1965 to October 1965. At the end of December 1965 the amount due and owing by them to the plaintiffs was $4,625.70. On or about 16th September, 1966 they paid a sum of $200 to account, leaving a balance of $4,425.70 still due.

In their affidavit in support of the application Wong Nung Chong and Loo Ng Ming said that they had ceased to be partners of the defendant firm on 27th February, 1965, having sold and assigned all their shares, rights and interests in the firm to Pang Kim Wah alias Pang Sang and Foong Soon Hin under an agreement of the same date. They also duly signed the form of withdrawal from the partnership on the same day and handed it to Pang Sang for filing with the Registrar of Businesses. They subsequently learned that the said Pang Sang did not send the withdrawal form for registration.

Foong Soon Hin in his affidavit in support of the application said that he had ceased to be a partner of the defendant firm on 17th August, 1965, having sold and assigned all his shares, rights and interests in the firm to Pang Kim Wah alias Pang Sang under an agreement of the same date. He also signed the form of withdrawal from the partnership on the same day and handed it to Pang Sang for filing with the Registrar of Businesses. He subsequently learned that the said Pang Sang did not send in the withdrawal form for registration.

It was clear that the withdrawal by the